Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
Comment Requested on A La Carte and	**)**	**MB Docket No. 04-207**
Themed Tier Programming and Pricing	**)**	
Options for Programming Distribution on	**)**	**DA 04-1454**
Cable Television and Direct Broadcast	**)**	
Satellite Systems	**)**	

Comments By:

The Pioneer Telephone Association, Inc. d/b/a Pioneer Communications ("Pioneer")

Background and Summary of Comments

Pioneer Communications is an independent telecommunications service provider, serving just less than 9,500 cable television subscribers across twenty-one small communities in rural western Kansas. As a small cable operator Pioneer is regularly in direct contact with our customers, and we understand their interests in having the option to affordably exercise more choice in the expanding universe of video programming. Pioneer currently offers more than 64 channels of Basic tier programming, more than 50 channels of Premium programming, 11 channels of Pay-per-view programming, and more than 100 channels of digital tier programming, including more than 50 channels of music. As we have endeavored to expand the selection of channels available to our rural customers in recent years, we have seen considerable interest in and appreciation of the improved variety of programming.

However, as the tiers grow larger, and rates issued by programmers increase across the board, Pioneer receives more and more inquiries from our customers with an interest in the option of being able to purchase their programming on an *a la carte* or themed-tier model, whereby they pay for and receive only the channels they want, and bypass those that they would prefer not to see.

As a small, local operator, our interests are tied immediately to those of our customers, and Pioneer, too, supports the investigation and proposed development of an option of *a la carte* or themed-tier programming selection in addition to the traditional tiers. However, the current environment strictly prohibits the development of such a consumer choice-driven concept.

For these reasons, and with our customers' interests in mind, Pioneer urges the Commission, and Congress, to assist us in developing a climate that is freed of the overbearing and dominating interests of the media giants, and refashioned to be more amenable to needs of small, rural operators, and more in tune with the preferences of our customers, and those across the nation.

I. Historical

Do MVPDs currently have the option to purchase channels from programmers on a stand-alone basis, such that they could, if they chose, offer programming to consumers on an a la carte or themed-tier basis? What are their limitations, if any, on their flexibility to do so?

There are a number of conditions that presently limit small operators, such as Pioneer, from developing and extending the option of a la carte or themed-tier programming to consumers.

The greatest restriction in existence today is to be found in the contractual obligations and affiliation requirements mandated by programmers. It is becoming less and less common for programmers to present operators with the option to purchase channels on a stand-alone basis. As the consolidation of media ownership has accelerated, and more and more broadcast and cable networks fall into the hands of a smaller number of conglomerates, programmers are increasingly requiring operators to purchase and carry a bundle of their networks in order to obtain licensing rights for any single network.

Formerly, it was common practice for the programmers to wholly control terms of pricing and placement, and occasionally offer discounts to operators if they chose to license more than one network from the programmer's stable. Today that practice has virtually ceased and the idea of choice has all but disappeared. Now it is more common to find that the discounts have been eliminated and programmers are instead forcing a collection of networks on operators in a "take-all-or-get-none" scenario. These tying and bundling requirements, as asserted by the majority of major programmers, are not only unfavorable to a future of a la carte or themed-tier selection, but exist contractually as an insurmountable physical barrier to choice in programming.

For example, one popular sports network programmer – already notorious for annual rate increases in license fees of nearly 20% per year – now requires that the operator must carry no less than four other networks, all owned by the same sports media company, in order to be extended license to carry the one original marquee network. The majority of these additional, mandated networks also come with their own substantial license fees, which only compounds the cost for the operator, and ultimately, the consumer. The programmer provides no option for the operator to parcel out carriage of only the original marquee network, and flatly rejects access to any of the less popular networks on a stand-alone basis.

Similar conditions and contractual constraints on the part of most other major programmers severely, if not completely, limit the small operator's freedom to voluntarily unbundle programming and develop a la carte or themed-tier offerings for consumers. In the case of small operators, who have little or no leverage in negotiating agreements with the massive programming corporations, this amounts to an explicit abuse of the programmer's market power.

The effects of forced carriage of programming are far reaching. As the rates for mandatory bundles of programming surmount, small operators are left with few alternatives to control costs. Often, this results in erosion of margins, consumer rate increases, or a combination of both. The majority of small operators already operate at very small margins, especially so when compared to the margins of the larger MSOs. As margins erode further, smaller operators are then faced with the challenge of a reduced income which threatens to limit their ability to continue investment in infrastructural upgrades and deployments of new and advanced telecommunications services in small and rural communities. This condition is then positioned to exacerbate the "Digital Divide" and further inhibit technological advances for customers in these smaller markets.

Additionally, the rampant tying and bundling of programming consumes valuable spectrum in the small operator's cable system. As more channel space is consumed to accommodate the forced programming, less capacity is available to develop and deliver advanced and interactive services, such as broadband Internet access, telephony, video on-demand, or new distance education initiatives – services that are critical to a competitive and consumer-friendly marketplace, and crucial to bettering the quality of life in rural communities.

In addition to the limitations set by programmers, operators also face a second significant restriction in the form of technological barriers. At present, the limits and limited availability of technology preclude or severely restrict the deployment of a la carte or themed-tier programming services. In order to receive these services, which must be digitally transmitted and encrypted, a customer is required to possess either a television with an embedded capability to tune a digital cable signal, or the addition of an outboard digital tuner set-top to a standard television set.

Due in great part to slow standardization and development efforts in the consumer electronics industry and the initially burdensome costs of such technology, customers in the Pioneer cable service area do not currently have one-way digital cable-ready televisions, and the same is true of virtually the entire U.S. market. Thus, in order to receive digital and interactive services, the only viable option for customers is to lease or purchase a set-top device to receive digital programming. This creates additional costs for operators and consumers.

This issue of technological requirements and limitations is addressed further in response to questions in Section VI, regarding digital set-top converters.

A third limitation is found in the form of an economical barrier, resultant primarily of the costs and restrictions of programming, and the deployment requirements of digital technology, as cited above. Generally operating on tight margins and reduced cash flow, small operators are faced with a tremendous cost burden when looking at an a la carte future with the existing lack of freedom in programming choice, and lack of ubiquitous and affordable technology for the consumer market. Without improvements in the realm of program licensing, and without increased production and reduced purchase costs for digital cable equipment, small operators are faced with an additional restriction that is purely economic.

What statutory or regulatory action would be needed to remove any such limitations?

Small operators are greatly encouraged by the Commission's initial steps of inquiry into the questions of programming, pricing, and a la carte, and the efforts of Senator McCain and Representative Deal. However, as clearly evidenced in each round of affiliation agreement renewal with most major programmers, current legislation and regulation provides no effective control over the abusive practices of the large media corporations as they freely assert their power over small operators and the public.

In order to remove such limitations, Pioneer believes Congress and/or the Commission may be required to initiate a fundamental restructuring of the multi-channel video and programming business. The primary focus of the restructuring effort should be designed to reduce or eliminate many of the carriage and distribution conditions and requirements that programmers exact of operators. Moreover, such an endeavor should also seek to ensure that per-subscriber fees for programming and operator obligations are uniform and balanced in such a way that rural and small operators are not unfairly treated and penalized simply for the size, or lack thereof, of their given market. Ultimately, the removal of such limitations and inequities would allow for more consumer choice in programming selection and more affordable rates for customers of small and rural cable operators, and is the only means to enabling operators with the opportunity to develop a la carte programming services.

Moreover, in the interest of fairness and transparency, another recommendation for change would preclude the onerous nondisclosure requirements asserted today in virtually all programming affiliation agreements. The non-disclosure mandate is utilized by programmers to rigorously shield from the public's view the unreasonable terms and exorbitant rates and rate increases they demand of licensees of their product. As a result of the lack of rate transparency, consumers are kept completely unaware of the true costs behind their cable subscription rates, and the principal cause behind nearly all cable rate increases. Small operators are rendered powerless to inform their customers and prohibited from empowering consumers with this knowledge.

Another area for regulatory review or statutory action to alleviate the limitations set upon operators and their customers is the matter of continued concentration of media ownership. As programmer conglomerates have grown in size, they have increasingly abused their power over smaller operators, dictating otherwise unqualified rates for media and repeatedly raising those rates at levels far in excess of the rate of inflation. As the General Accounting Office reported in October of 2003 in their study of *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, programming rates for cable networks rose as much as 34% on average in the period of 2001 to 2003, and cable networks featuring sporting events rose as much as 59% during the same period. Moreover, the GAO was able to confirm that these exorbitant increases in rates issued by programmers, were the key factor in putting upward pressure on cable subscription rates.

With small and independent operators virtually powerless to act on behalf of the interest of their customers and affect any change in the rate structuring set by today's behemoth programming entities, Pioneer seeks the support of Congress and the Commission to assist operators in reigning in programming rates and monitoring programmer's abusive practices, while curbing the swell of ownership concentration in the media industry.

II. Rates

III. Retransmission Consent

How have broadcast networks and affiliate groups used the retransmission consent process to expand carriage of affiliated programming? How has this affected rates for MVPD offerings for consumers?

Broadcast affiliated programmers increasingly use retransmission consent to leverage carriage of unwanted cable programming services amongst cable operators. With the recent wave of consolidation in the media industry, and the fact that many broadcast and cablecast networks share the same ownership, small operators are increasingly the target of a more pronounced effort by many broadcast networks to tie retransmission consent for "free" over-the-air broadcast networks to what amounts to an additional must-carry agreement for an affiliated cable programming network or service.

In the most recent round of retransmission consent renewals, Pioneer witnessed an increasing number of mandates from broadcasters for terms and conditions tied to retransmission consent that we found to be unfair, inappropriate, and impermissible. Many broadcast networks have begun to demand regular monthly licensing fees for access to "free" over-the-air broadcast signals. Additionally, Pioneer has noticed broadcasters demanding reservation of considerable blocks of local cable advertising avails from the cable operator for cross-channel promotion of the broadcaster's service, or services, to be delivered at no charge, in exchange for retransmission consent of the broadcast network. One local broadcast network affiliate even went so far as to demand that our small cable system would have to agree to purchase a fixed and substantial amount of advertising on the broadcaster's station, in exchange for consent to retransmit their broadcast signal.

Conditional requirements such as these are an obvious abuse of the retransmission consent and must-carry rules. They pose undue burdens upon small and rural cable operators, and have not been demonstrated in any way to serve the interests of the consumer.

Do the rules governing retransmission consent and must-carry limit consumers' ability to select their own programming? If so, how?

As broadcast affiliated programmers increasingly use retransmission consent to leverage carriage of unwanted cable programming, they increasingly limit consumer choice. Just as many cable programmers force carriage of unwanted networks on operators, today many broadcast programmers are doing the same, and conditionally tying retransmission consent of the over-the-air broadcast network to other programming services. Operators have experienced a marked increase in this practice with the recent wave of consolidation in the media industry, whereby many broadcast and cable networks share the same ownership and share a similar interest in forcing their product on small cable markets, regardless of whether consumers in that market have an interest in the programming, and the cost increases associated with it.

In the case of Pioneer's market in rural western Kansas, the practices of broadcasters under current retransmission consent rules limit consumer choice in another way. Pioneer's cable service area exists in a very rural environment, one that traditionally has been underserved, without ample coverage and sufficient quality of the local broadcasters' signals. This area also borders along the western boundary of the Kansas state line, with many service areas adjacent to Colorado, and five communities actually resident in the Mountain Time Zone. However, local broadcasters have repeatedly cited broadcast rules to drive pre-existing Denver-market broadcast stations completely from our customers' cable programming lineup.

The Kansas broadcasters claim their entitlement to the entirety of the arbitrarily assigned Wichita-Hutchinson-Plus DMA. Yet while they issue a blanket claim to this area as their sole territory, they fail to adequately blanket the region with a quality signal to serve both over-the-air viewers and viewers of their signal over cable retransmission. Sitting midway between both markets, Pioneer's customers have repeatedly requested to have improved choice in being able to see both the Wichita and Denver-market broadcast stations. And although both markets serve the commercial, news, sports, and entertainment interest of our western Kansas customers, consumer interests have fallen upon deaf ears as we have conveyed these concerns to the Kansas broadcasters.

Not surprisingly what were formerly known as locally-owned broadcasters are today almost entirely owned by large media corporations with the majority of their interests and employees out of state.

IV. Diversity of Programming

What effect, if any, would the voluntary offering of a la carte or themed-tier service have on the ability of independent, niche, religious, and ethnic programming to continue to be carrier or launched?

Very simply, the effect of a la carte pricing and network distribution on the viability of independent and niche programming cannot be determined until programmers loosen, or altogether remove, their distribution requirements and allow operators to make networks available to viewers on a stand-alone basis

It is widely held by many programmers that the a la carte model will reduce overall program diversity and selection, and that without the support of the broadened, and effectively subsidized, distribution that is afforded by the current tiering model, many niche networks would not be able to attract enough viewers to support the costs of the network. As an outright rejection of an a la carte option, these arguments are commonly made by programmers, and large multichannel video providers that often turn out to be programmers themselves.

However, what these programmers fail to acknowledge is that their practices of bundling of networks and restrictive tier placement requirements cloud the true market value of any given network. In many cases, due to the forced bundling of programming, a network exists on an operator's channel lineup only because of a contractual obligation binding it to another network(s) owned by the same large media entity.

A number of networks may not be able to stand on their own in the media marketplace, but this is a dynamic of an open market where all programming vendors are allowed to introduce their product, and where consumer choice ultimately determines the kind of programming the public would like to see and the value that subscribers would assign and/or agree to pay for selective programming. If a network cannot justify its existence by standing on its own in an a la carte world, then it may just be that the voice of the marketplace has spoken and made clear that it has no interest in the programming.

However, if a niche network has great enough merit and interest to its selective market, and is made available without restriction to that market, consumers would ultimately be able to choose what programming is meaningful for them and their families. Thus, it is quite likely that many existing and new niche networks could survive and flourish on a stand-alone basis, and reap the benefits of the targeted advertising value that they bring to commercial advertisers.

Forced bundling of programming on the part of the media giants also inhibits the opportunities for smaller and independent programmers to bring their networks to wider distribution. Because many operators find their channel capacity contractually dedicated to large blocks of programming bundles as mandated by the larger programmers, operators have less opportunity to open up their spectrum to many of the smaller and independent programmers. Thus, unbundling of networks in an a la carte marketplace, could potentially increase a small, independent, or niche network's opportunity for distribution.

V. Rural and Smaller Markets

Describe the programming cost differential for the largest cable and satellite companies and the smallest independent MVPDs in smaller markets and rural areas. What is the "volume discount" to the larger companies?

As a small operator it is difficult to determine the amount of the differential in programming costs that can be attributed to legitimate volume discounts between small, independent operators and the largest cable and satellite companies, namely because of the lack of transparency in programmer agreements, with the fees and particular terms of the volume discounting being subject to non-disclosure. Thus, that actual data is not available for scrutiny and comparison.

However, based upon language found in the majority of agreements with programmers, it becomes very evident that the volume discounts are designed only in the favor of large operators, and of little or no benefit to small operators. Many volume discounts do not begin to take effect until an operator has reached a distribution of as much as 100,000, or 250,000, or more. In the case of most small and independent operators, including Pioneer which serves less than 10,000 cable subscribers, the majority of these volume discounts are almost entirely unattainable on an individual basis.

Once again, small operators, and their customers, are put at a severe disadvantage in terms of obtaining the most reasonable and affordable programming license fees.

Given the small size of Pioneer's operations and customer base, a rural operator's best effort, in many cases, is to seek programming through affiliation with the National Cable Television Cooperative (NCTC), to try and obtain some degree of volume-based discounting. However, the membership and associated leverage of the NCTC in negotiating preferred rates and obtaining volume discounts is still appreciably less than that of the larger multiple system operators (MSOs).

Moreover, the NCTC affiliate channel does not grant access to all programming; there are a number of networks that have yet to make their programming available to the membership of the cooperative through master affiliation agreements with the NCTC.

In addition to programming, most large operators also enjoy access to volume-discounted equipment, such as digital set-top converters. Often, small operators end up with greater per-unit purchase costs, due to small volume purchases. This becomes yet another cost factor that cuts into the margins of small operators and puts them at a competitive disadvantage when compared to larger operators.

What percent of total expenses do smaller MVPDs in smaller markets and rural areas attribute to programming, and how does this compare to the largest cable and satellite companies?

Once again, it is difficult, as a small operator, to determine what percent of total expenses is attributable to programming for the largest cable and satellite companies. However, in Pioneer's case, over fifty percent of Pioneer's total expenses is attributable to programming fees.

VI. Set-Top Boxes

Is an addressable converter box required for every television set on which a consumer might wish to view programming offered on an a la carte or themed-tier basis?

An addressable converter box would be required for every television set in order to offer services *a la carte*. The present state of technology would require every television set to have a digital converter box in order to view digital programming.

What is the number of television sets that are not currently connected to addressable converter boxes?

Currently Pioneer's inventory of digital set-tops, manufactured by Motorola Corporation, are capable only of tuning analog and digital signals for a single television. Pioneer provides lease of one digital set-top converter inclusive with subscription to an initial digital tier of service, at no additional charge. However, most homes have more than one television set per household, 2.5 televisions per home on average. Thus, purchase or monthly lease of secondary set-top converters is required for those customers who would like to extend digital programming services to any additional sets in the home.

For example, a household in the Pioneer cable service area with three televisions would receive complimentary lease of one set-top with their digital service subscription, and then be required to lease, or purchase, two additional digital set tops in order to view digital cable services on all three of their televisions.

It is estimated that as many as four out of every five television sets in the Pioneer cable service area not currently connected to addressable set-top converters. In raw numbers, it is estimated that as many as 18,000 of a projected 23,000 sets are without addressability. These estimates are based upon the Pioneer cable service households only, and do not take into account television sets in non-cable (satellite or broadcast-only) households.

What are the costs to consumers of buying or leasing these boxes?

Pioneer currently provides complimentary lease of the initial primary set-top as an inclusive feature of a customer's subscription to a digital programming service. Additional, or secondary, set-tops require lease or purchase.

At present, Pioneer makes available three models of two-way digital set-top converters for lease or purchase – the Motorola DCT1700, DCT2000, and DCT2000 with Dolby Digital home theater option. The standard-issue DCT1700 and DCT2000 set-tops are leased to customers at the rate of $3.00 per month. The premium DCT2000 with Dolby Digital option is leased at the rate of $4.00 per month.

Customers also have the option to purchase a digital converter. The DCT1700 is sold for $150.00, the DCT2000 for $255.00, and the DCT2000 with Dolby Digital option for $285.00. These prices reflect Pioneer's own original cost of purchasing the box from the manufacturer, plus tax, freight, and handling; otherwise, no additional mark-up is added to the cost of the set-top.

Pioneer plans to introduce a more advanced set-top to its customers later this summer. The forthcoming set-top, the Motorola DCT6412, is capable of tuning standard and high-definition digital programming, as well as analog programming, and the set-top features a dual-tuner digital video recorder (DVR) for time-shifted hard disk recording, plus an integrated DOCSIS high-speed data modem. As with all other set-top models, Pioneer plans to make the DCT6412 available to customers both by lease and purchase. Purchase price and lease rate have not yet been officially set for the DCT6412 as of this time; however, original purchase cost from the manufacturer is expected to be in excess of $550 each when they are made available from Motorola and qualified for deployment later in the year.

Is it true that a la carte or themed-tier services can only be offered on a digital basis?

Given the limitations of current analog transmission and filtering technologies, and the limitations of receiver technologies to be found in the current consumer electronics market, it is true that a la carte or themed-tier services can only be offered on a digital basis. Digital encoding, transmission, reception, and provisioning are currently the only practical means available to potentially deliver such a customized and diverse myriad of "pick-and-choose" programming.

What percent of consumers currently subscribe to digital programming packages?

As of July 3, 2004, 14.28% of Pioneer's cable customers have opted to purchase a digital tier of service, in addition to their Basic tier subscription.

As of July 3, 2004, 0.075% of Pioneer's digital tier subscribers have purchased a digital set-top converter, and the remaining 99.925% have elected to lease a set-top. Only 1 out of 1,327 digital tier subscribers has opted to purchase a set-top digital converter, instead of leasing the equipment.

On average, 3 out of every 5 digital tier subscribers in the Pioneer cable service area opt for lease of a secondary (2^{nd}, 3^{rd}, etc.) set-top for additional television sets in their home.

What impact would an a la carte and themed-tier service have on the uni-directional plug-and-play regulations, and on the ongoing discussions regarding bi-directional plug-and-play regulations?

The one-way CableCARD initiative recently launched on July 1, 2004, but to date there is no known presence of CableCARD-enabled sets in Pioneer's cable customers' households; thus, digital set-tops are continue to be deployed for the reception of all digital services.

With no penetration of CableCARDs presently in the Pioneer cable service area, and no consequent feedback regarding operability and customer utilization, it is difficult to predict the impact of the uni-directional plug-and-play at this time.

However, given the increasingly interactive nature of many existing, and future, cable television-based services, and resultant limitations of a one-way device, it is projected that a bi-directional plug-and-play solution will be of greater benefit to operators and consumers.

VII. Legal and Regulatory Questions

Is there any reason to treat cable and satellite operators differently with regard to the a la carte and themed-tier service?

In order to maintain a level and competitive playing field, small operators feel that cable and satellite distributors should not be treated any differently with regard to a la carte and themed-tier services. If a la carte or themed-tier services are to be a required offering of a multi-channel video programming distributor, then the requirement should be universal, regardless of the distributor's transmission format, be it cable television, satellite, or other.

Would MVPDs be in compliance with the must carry rules so long as they offered all local broadcast stations on an a la carte or themed-tier basis, or would the must-carry rules prohibit MVPDs from offering local broadcast stations on an a la carte or themed-tier basis?

47 C.F.R. § 76.56 imposes signal carriage obligations on cable providers such as Pioneer. It is our reading of the regulations that leads us to believe the must carry rules impose a requirement to supply each and every customer with the local broadcast stations. That is a stricter requirement than simply offering the broadcast stations individually or on an individual tier. In order to comply with the must carry rules, while implementing *a la carte* or themed-tier, a provider such as Pioneer could offer a minimum basic package consisting of the broadcast stations protected by the must carry rules, and allow all other programming to be selected on an *a la carte* or themed-tier basis. If offered in this manner, Pioneer would be complying with the must-carry rules, while offering customers the ability to pick and choose the channels for which the prefer to pay and view.

Respectfully submitted on behalf of The Pioneer Telephone Association, Inc. d/b/a Pioneer Communications ("Pioneer") by,

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